Supreme Court, U.S.
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No. 98-977

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

THE AMERICAN BIBLE SOCIETY, *et al.*,

Petitioners,

vs.

BOYD L. RICHIE, as Guardian
of the Estate of LOUISE T. PETER,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

CERTAIN RESPONDENTS' BRIEF SUPPORTING PETITION FOR WRIT OF CERTIORARI

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PARTIES TO THE PROCEEDING

The Respondents submitting this response are Anderson University, Inc. d/b/a Anderson University, Mount Holyoke College, Smith College, Vassar College, St. Olaf College, Wittenberg University, Northwestern University, The Salvation Army, a New York Corporation, The Salvation Army, a Georgia Corporation, The Salvation Army, a California Corporation, The Salvation Army, an Illinois Corporation, United Church of Christ, Good Shepherd Home Foundation and Gray, Plant, Mooty, Mooty & Bennett. These respondents were among the Defendants-Appellants in the Court of Appeals.

Petitioners are The American Bible Society, The Moody Bible Institute of Chicago d/b/a Moody Bible Institute, American Leprosy Missions, Inc., The Lutheran Church-Missouri Synod, The Texas District, Lutheran Church-Missouri Synod, The Lutheran Foundation of Texas, Baptist Foundation of Texas, American Baptist Foundation, American Baptist Foreign Mission Society, The Evangelical Lutheran Church in America, General Conference Corporation of Seventh-Day Adventists d/b/a General Conference of Seventh-Day Adventists, Loma Linda University, University of Colorado Foundation, Inc., The American Council on Gift Annuities, Inc., Planned Giving Resources, Prerau & Teitell, Planned Giving Services, Inc., d/b/a Planned Giving Services, and Hay/Huggins Company, Inc., which were among the Defendants-Appellants below.

Respondent Boyd L. Richie, as Guardian of the Estate of Louise T. Peter, was Plaintiff-Appellee in the Court of Appeals.

The other parties to the proceedings in the Court of Appeals were Defendant-Appellant Southern Baptist Convention and Appellant the Attorney General of the State of Texas.

CORPORATE DISCLOSURE STATEMENT

None of these Respondents has any parent or non-wholly owned subsidiary companies.

CERTAIN RESPONDENTS' BRIEF SUPPORTING PETITION FOR WRIT OF CERTIORARI

Respondents Anderson University, Mount Holyoke College, Smith College, Vassar College, St. Olaf College, Wittenberg University, Northwestern University, The Salvation Army, a New York Corporation, The Salvation Army, a Georgia Corporation, The Salvation Army, a California Corporation, The Salvation Army, an Illinois Corporation, United Church of Christ, Good Shepherd Home Foundation and Gray, Plant, Mooty, Mooty & Bennett respectfully support Petitioners in requesting a writ of certiorari to review the June 12, 1998, order of the United States Court of Appeals for the Fifth Circuit sanctioning Petitioners and these Respondents under FED. R. APP. P. 38.

STATEMENT OF THE CASE

As stated in the Petition for Writ of Certiorari, this case arises from the claim that charities violated the Sherman Act by conspiring to fix rates of return for charitable gift annuities. Although the Fifth Circuit rendered judgment dismissing that claim with prejudice, a live controversy remains concerning the Fifth Circuit's order sanctioning Petitioners and these Respondents in the amount of $15,000.00 for bringing a meritorious and successful appeal. Pet. App. at 1-8. For the sake of brevity, and to avoid repetition, these Respondents adopt and incorporate Petitioners' statement of the case.

REASONS TO GRANT THE WRIT

These Respondents agree with Petitioners that at least three reasons justify review of the Fifth Circuit's order sanctioning prevailing appellants for bringing a meritorious and successful appeal presenting important issues of first impression.

First, the Fifth Circuit's conclusion that FED. R. APP. P. 38 authorizes sanctions in cases of first impression (Pet. App. at 1-7) conflicts directly with *McKnight v. General*

Motors Corporation, 511 U.S. 659 (1994) (per curiam), and with several decisions of the United States Courts of Appeals, including three decisions of the Fifth Circuit.

Second, the Fifth Circuit's decision to judge the alleged frivolity of this appeal by reference to the Charitable Gift Annuity Antitrust Relief Act of 1995, Pub. L. No. 104-63, 109 Stat. 687 (1995), rather than the Charitable Donation Antitrust Immunity Act of 1997, Pub. L. No. 105-26, 111 Stat. 241 (1997) (*see* Pet. App. at 6-7), conflicts with this Court's decision in *United States v. Schooner Peggy*, 1 Cranch 103, 2 L. Ed. 49 (1801), which requires federal courts to decide cases according to existing laws, and with the Court's decision in *American Bible Society v. Richie*, 118 S. Ct. 596 (1997) (per curiam), which directed the Fifth Circuit to reconsider this case in light of the 1997 Act.

Third, the Fifth Circuit's determination that this appeal was frivolous when filed because the 1995 Act "obvious[ly]" did "not reach conspiracies involving both exempt and non-exempt entities" (Pet. App. at 7, 27-29) is an abuse of discretion justifying an exercise of the Court's supervisory power.

For the sake of brevity, and to avoid repetition, these Respondents adopt and incorporate Petitioners' arguments concerning these three compelling reasons to grant the writ.

CONCLUSION

For the reasons stated above and explained in the Petition, these Respondents respectfully support Petitioners' request for a writ of certiorari to review the June 12, 1998, order of the United States Court of Appeals for the Fifth Circuit imposing sanctions under FED. R. APP. P. 38. If the Court deems argument to be unnecessary, the Court should grant the writ and summarily reverse the sanctions in accordance with *McKnight v. General Motors Corporation*, 511 U.S. 659 (1994) (per curiam).

March 11, 1999

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